

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 1997-439-T - ORDER NO. 2006-345

JUNE 12, 2006

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|----------------------------------------------------|---|---------------|
| IN RE: Application of John P. McClain d/b/a Island |) | ORDER DENYING |
| Moving & Storage, 123 Brady Street, Daniel |) | MOTION FOR |
| Island, South Carolina 29492 (District 6) for a |) | SUSPENSION |
| Class E (Household Goods) Certificate of |) | |
| Public Convenience and Necessity. |) | |

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Motion filed by the Office of Regulatory Staff (ORS) for Immediate Suspension of the Certificate of Public Convenience and Necessity possessed by John P. McClain d/b/a Island Moving & Storage (McClain or the Company). ORS notes that contemporaneously with this Motion, it filed a Petition for Rule to Show Cause, requesting that the Commission schedule a formal administrative hearing to revoke said Certificate, which was Number 9691, issued under Order No. 98-285 in Docket No. 1997-439-T.

ORS states that, shown in attachments to the Petition, it evidenced that Empire Fire and Marine Insurance Company canceled the motor carrier insurance policy of McClain Taxi effective April 28, 2006. Further, ORS notes that McClain has failed to respond to the request of the ORS to provide evidence of insurance since the date of the cancellation of its policy with Empire Fire and Marine Insurance Company. ORS notes that 26 S.C. Code Ann. Regs. 103-175 (Supp. 2004) provides that "Either a failure to file

evidence of insurance or surety bond or failure to keep all insurance or bonds in full force and effect shall be just cause for the Commission without further evidence or hearing, to suspend its order granting authority or to suspend the certificate or any license issued to the motor carrier.”

Further, ORS notes that although a full evidentiary hearing will be set by the Commission in this matter, until such hearing is held and an order issued by the Commission, McClain may continue to operate as a licensed motor carrier in this state without any form of insurance, unless some immediate action is taken by this Commission, and that such operation is contrary to the public interest.

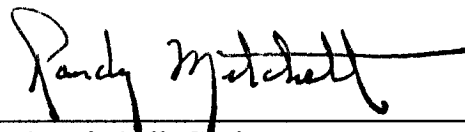
Although we are mindful of 26 S.C. Code Ann. Regs. 103-175 (Supp. 2004), we would note with interest the provisions of S.C. Code Ann. Section 1-23-370 (c)(Revised 2005), which states that no suspension of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. The statute goes on to state that if the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. We believe that this statute applies to the instant case.

Accordingly, the Motion for Immediate Suspension must be denied at this time. We hold that a Motion seeking to shut down a business based upon alleged violations of law should be supported by evidence rather than bare allegations. Standing alone, the

Form K submitted by ORS fails to rise to the level of evidence necessary to invoke immediate suspension because it does not definitively demonstrate lack of insurance. Instead, it delineates a thirty day notice of a future lack in insurance coverage. It would be preferable for a Motion such as the one before us to be supported by a verified complaint, affidavits, or other documentary evidence. Therefore, in the absence of the submission of evidence that would support a finding of an emergency pursuant to S.C. Code Ann. 1-23-370, the company must be given a hearing on the request for interim suspension prior to such drastic relief being considered.

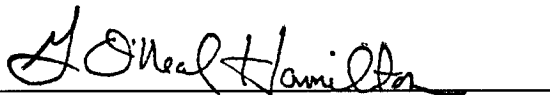
For this reason, the Motion for Immediate Suspension is denied at this time. The Motion may be reconsidered at said hearing. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Randy Mitchell, Chairman

ATTEST:



G. O'Neal Hamilton, Vice Chairman

(SEAL)